

JAMES R. McGUIRE (CA SBN 189275)
JMcGuire@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: 415.268.7000
Facsimile: 415.268.7522

SYLVIA RIVERA (CA SBN 223203)
SRivera@mofo.com
MORRISON & FOERSTER LLP
555 West Fifth Street
Los Angeles, CA 90013-1024
Telephone: 213.892.5200
Facsimile: 213.892.5454

Attorneys for Defendants
U.S. BANCORP and
U.S. BANK NATIONAL ASSOCIATION,
sued as "U.S. BANK, N.A."

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GEORGE T. BURKE, ROBERT LOWE and
LORI ALDANA, husband and wife; SHANE
PARKINS and KARA PARKINS, husband and
wife, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

U.S. BANCORP, U.S. BANK, N.A., and DOES
1 through 10, inclusive,

Defendants.

Case No. CV 09 1579 JSW

CLASS ACTION

**STIPULATION AND ~~PROPOSED~~
ORDER STAYING ACTION
PENDING RESOLUTION OF MDL
TRANSFER ISSUE**

Hon. Jeffrey S. White

1 Plaintiffs George T. Burke, Robert Lowe, Lori Aldana, Shane Parkins, and Kara Parkins
 2 (“Plaintiffs”) and Defendants U.S. Bancorp and U.S. Bank National Association, sued as “U.S.
 3 Bank, N.A.” (“Defendants”), by and through their respective attorneys, hereby stipulate and agree
 4 as follows:

5 WHEREAS, this Action involving the imposition of checking account overdraft fees was
 6 commenced on February 6, 2009, in California State Superior Court;

7 WHEREAS, Defendants removed this Action from California State Superior Court on
 8 April 10, 2009;

9 WHEREAS, Plaintiffs filed their Second Amended Complaint in this Action on July 14,
 10 2009;

11 WHEREAS, on July 17, 2009, Defendants filed an Administrative Motion to Consider
 12 Whether Cases Should be Related, pursuant to Civil Local Rule 3-12, with respect to this Action
 13 and another checking account overdraft fee action pending against Defendants in this District,
 14 *Wilyum Waters, et al. v. U.S. Bancorp, et al.*, Case No. CV 09 2071 EMC (“*Waters*”);

15 WHEREAS, on July 28, 2009, this Court issued a Related Case Order reassigning *Waters*
 16 to this Court (*see* Dkt. No. 25);

17 WHEREAS, on June 10, 2009, the Judicial Panel for Multidistrict Litigation (the “Panel”)
 18 issued a Transfer Order in *In re Checking Account Overdraft Litigation* (MDL No. 2036) (*see*
 19 Exhibit A);

20 WHEREAS, the Panel’s June 10, 2009 Transfer Order transferred to the Southern District
 21 of Florida three other class actions involving the imposition of checking account overdraft fees
 22 for consolidated or coordinated pretrial proceedings with two actions already pending in that
 23 District;

24 WHEREAS, since June 10, 2009, the Panel has transferred additional class actions
 25 involving the imposition of checking account overdraft fees to the Southern District of Florida as
 26 “tag-along” actions to *In re Checking Account Overdraft Litigation* (MDL No. 2036);
 27
 28

1 WHEREAS, on or about July 16, 2009, the plaintiffs in *Waters* filed a notice with the
 2 Panel identifying *Waters* and this Action as potential “tag-along” actions to *In re Checking*
 3 *Account Overdraft Litigation* (MDL No. 2036) (*see* Exhibit B);

4 WHEREAS, on July 23, 2009, the Panel issued a Conditional Transfer Order
 5 conditionally transferring this Action, *Waters*, and a third, unrelated action to the Southern
 6 District of Florida as potential “tag-along” actions to *In re Checking Account Overdraft Litigation*
 7 (MDL No. 2036) (*see* Exhibit C);

8 WHEREAS, any notices of opposition to the Panel’s July 23, 2009 Conditional Transfer
 9 Order are due by August 7, 2009;

10 WHEREAS, the parties to this Action wish to avoid the unnecessary consumption of their
 11 own and the Court’s resources and time while awaiting a decision by the Panel on whether this
 12 Action should be transferred to the Southern District of Florida for consolidated or coordinated
 13 pretrial proceedings as a “tag-along” action to *In Re Checking Account Overdraft Litigation*
 14 (MDL No. 2036);

15 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among
 16 Plaintiffs and Defendants, by and through their respective attorneys of record, as follows:

17 1. This Action shall be stayed pending a decision by the Panel on whether this Action
 18 should be treated as a “tag-along” action to *In Re Checking Account Overdraft Litigation* (MDL
 19 No. 2036) and transferred to the Southern District of Florida.

20 2. The foregoing stay shall include the stay of Defendants’ obligation to respond to
 21 Plaintiffs’ Second Amended Complaint and the parties’ obligations related to the Initial Case
 22 Management Conference currently scheduled for September 4, 2009.

23 //

24 //

25 //

26 //

27 //

28 //

3. If the Panel issues an order declining to transfer this Action, then:
- (a) Defendants shall file a Notice of Status of MDL Proceedings with this Court within ten (10) days after the date on which they receive notice of the Panel's order; and
 - (b) Defendants shall answer or otherwise respond to the Second Amended Complaint within twenty (20) days after the date on which they receive notice of the Panel's order.

Dated: July 29, 2009

MORRISON & FOERSTER LLP

By: /s/ Sylvia Rivera
Sylvia Rivera

Attorneys for Defendants
U.S. BANCORP and
U.S. BANK NATIONAL
ASSOCIATION, sued as "U.S.
BANK, N.A."

Dated: July 29, 2009

KELLER GROVER LLP

By: /s/ Carey G. Been
Carey G. Been

Attorneys for Plaintiffs
GEORGE T. BURKE, ROBERT LOWE,
LORI ALDANA, SHANE PARKINS, and
KARA PARKINS

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 30, 2009

By: 

Hon. Jeffrey S. White
United States District Judge